

MEDICINE BOARD[653]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code chapters 147, 148E, and 272C, the Board of Medicine hereby proposes to amend Chapter 8, “Fees,” and Chapter 17, “Licensure of Acupuncturists,” Iowa Administrative Code.

The proposed amendments revise the acupuncture rules to include a criminal background check as part of the licensure process, to further define the process for denial of licensure, and to remove or revise outdated rules related to registrants and lapsed licenses.

The Board approved these amendments during a regularly scheduled meeting on December 17, 2009.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on March 2, 2010. Such written materials should be sent to Mark Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or by E-mail to mark.bowden@iowa.gov.

There will be a public hearing on March 2, 2010, at 11:30 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148E, and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following new paragraph **8.2(2)“f”**:

f. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$55. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.

ITEM 2. Rescind the definitions of “Current registrant” and “Former registrant” in rule **653—17.3(148E)**.

ITEM 3. Amend subrule 17.4(1), introductory paragraph, as follows:

17.4(1) *Eligibility requirements for those who apply after July 1, 2001.* To be licensed to practice acupuncture by the board, a person shall meet all of the following requirements:

ITEM 4. Rescind subrules **17.4(2)** to **17.4(5)**.

ITEM 5. Renumber subrule **17.4(6)** as **17.4(2)**.

ITEM 6. Rescind subrule **17.5(1)**.

ITEM 7. Renumber subrules **17.5(2)** and **17.5(3)** as **17.5(1)** and **17.5(2)**.

ITEM 8. Amend renumbered subrules 17.5(1) and 17.5(2) as follows:

17.5(1) *Application for licensure.* To apply for a license to practice acupuncture, an applicant shall:

a. Submit the completed application form provided by the board, including required credentials and documents, and a completed fingerprint packet; and

b. Pay a nonrefundable initial application fee of \$300; and

~~(1) For current registrants, the fee to become licensed is prorated based on the expiration date of the individual’s registration. The board shall notify each registrant of the nonrefundable application fee when the board sends the application by certified mail.~~

~~(2) For former registrants, the fee to become licensed is a nonrefundable application fee of \$300.~~

c. Pay the fee identified in 653—paragraph 8.2(2) “f” for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

17.5(2) *Contents of the application form.* Each applicant, ~~other than current registrants,~~ shall submit the following information on the application form provided by the board:

a. to m. No change.

n. A completed fingerprint packet to facilitate a national criminal history background check. The fee for evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

ITEM 9. Rescind subrule **17.5(4)**.

ITEM 10. Renumber subrules **17.5(5)** to **17.5(9)** as **17.5(3)** to **17.5(7)**.

ITEM 11. Renumber subrule **17.5(10)** as **17.5(13)**.

ITEM 12. Amend renumbered subrule 17.5(4) as follows:

17.5(4) *Application cycle.* Applications for initial licensure, ~~except for current registrants,~~ shall be open for ~~120 days~~ 90 days from the date the application form is received in the board’s office.

a. After the ~~120 days~~ 90 days, applicants shall update credentials and submit a nonrefundable reactivation of application fee of \$100 unless granted an extension in writing by the committee or the board. The period for requesting reactivation of the application is limited to one year from the date the application form is received by the board.

b. No change.

ITEM 13. Amend renumbered subrules 17.5(6) and 17.5(7) as follows:

17.5(6) *Board responsibilities Licensure application review process.* ~~The board staff shall review new applications within two weeks of submission of all requested materials. If the individual clearly meets all of the requirements, staff may issue the license. If staff has any concern about the application, it shall be referred to committee at its next meeting. If the committee resolves the concern, staff may issue the license. If the committee recommends denial, the application will be referred to the board. The process below shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.~~

a. An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial application fee.

b. After reviewing each application, staff shall notify the applicant about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant’s qualifications for licensure, staff may administratively grant the license. The staff may grant the license without having received a report on the applicant from the FBI.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and administration and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant’s current qualifications for licensure.

(1) If there is no current concern, staff shall administratively grant the license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include but are not limited to: falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to issue the license administratively.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

- (2) Request that the applicant appear for an interview;
- (3) Grant a license;
- (4) Grant a license under certain terms and conditions or with certain restrictions;
- (5) Request that the applicant withdraw the licensure application; or
- (6) Deny a license.

h. The board shall consider applications and recommendations from the committee and shall:

- (1) Request an investigation;
- (2) Request that the applicant appear for an interview;
- (3) Grant a license;
- (4) Grant a license under certain terms and conditions or with certain restrictions;
- (5) Request that the applicant withdraw the licensure application; or
- (6) Deny a license. The board may deny a license for any grounds on which the board may

discipline a license.

17.5(7) *Grounds for denial of ~~application~~ licensure.* The board, on the recommendation of the committee, may deny an application for licensure for any of the following reasons:

a. and b. No change.

ITEM 14. Adopt the following **new** subrules 17.5(8) to 17.5(12):

17.5(8) *Preliminary notice of denial.* Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

17.5(9) *Appeal procedure.* An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing and may provide additional written information or documents in support of licensure.

17.5(10) *Hearing.* If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with 653—25.30(17A).

a. License denial hearings are contested cases open to the public.

b. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.

c. Evidence supporting the denial of the license may be presented by an assistant attorney general.

d. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.

e. The board, after a hearing on license denial, may grant or deny the application for licensure. The board shall state the reasons for its decision and may grant the license, grant the license with restrictions, or deny the license. The final decision is a public record.

f. Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

17.5(11) *Finality.* If an applicant does not appeal a preliminary notice of denial in accordance with 17.5(9), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

17.5(12) *Failure to pursue appeal.* If an applicant appeals a preliminary notice of denial in accordance with 17.5(9) but the applicant fails to pursue that appeal to a final decision within one year

from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.

ITEM 15. Amend subrule 17.7(1) as follows:

17.7(1) *Expiration date.* Certificates of licensure to practice acupuncture shall expire on October 31 in even years. ~~Those who are granted a license prior to October 31, 2000, shall receive a license that expires October 31, 2002.~~

ITEM 16. Amend subrule 17.7(4), introductory paragraph, as follows:

17.7(4) *Lapsed Inactive license.* Failure of a licensee to renew by January 1 will result in invalidation of the license and the license will become ~~lapsed~~ inactive.

ITEM 17. Amend rule 653—17.8(147,272C), catchwords, as follows:

653—17.8(147,272C) Reinstatement of a ~~lapsed~~ an inactive license.

ITEM 18. Amend subrule 17.8(1), introductory paragraph, as follows:

17.8(1) *Reinstatement requirements.* Licensees who allow their licenses to ~~lapse~~ go inactive by failing to renew may apply for reinstatement of a license. Pursuant to Iowa Code section 147.11, applicants for reinstatement shall:

ITEM 19. Amend subrule 17.8(2), introductory paragraph, as follows:

17.8(2) *Reinstatement restrictions.* Pursuant to Iowa Code section 272C.3(2) "*d*," the committee may require a licensee who fails to renew for a period of three years from the expiration date to meet any or all of the following requirements prior to reinstatement of a ~~lapsed~~ an inactive license:

ITEM 20. Amend subrule 17.10(4) as follows:

17.10(4) *Change of residence.* In accordance with Iowa Code section 147.9, licensees shall notify the board of changes in residence and place of practice within ~~14 days of moving~~ one month of the licensee's making an address change.

ITEM 21. Amend subrule 17.12(4), introductory paragraph, as follows:

17.12(4) *Unethical conduct.* The Code of Ethics (2008) prepared and approved by the NCCAOM shall be utilized by the board as guiding principles in the practice of acupuncture in this state. Unethical conduct in the practice of acupuncture includes, but is not limited to: